

BEFORE NANCY KEENAN, SUPERINTENDENT OF PUBLIC INSTRUCTION

STATE OF MONTANA

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IN RE THE MATTER OF PETITION)	
TO TRANSFER TERRITORY FROM)	OSPI 257-95
POPLAR HIGH SCHOOL DISTRICT)	
NO. 9B TO FROID HIGH SCHOOL)	DECISION AND ORDER
DISTRICT NO. 65E)	
)	

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PROCEDURAL HISTORY

This is an appeal by Poplar High School District of the Acting Roosevelt County Superintendent of School's approval of the transfer of territory from Poplar Elementary and High School Districts to Froid Elementary and High School Districts. Approval of the high school territory transfer was appealed to the State Superintendent. The State Superintendent has no jurisdiction over elementary district territory transfers.

The county commissioners received petitions to transfer elementary and high school territory and determined that the petitions met the requirements of statute. Following proper notice, a public hearing was held on April 20, 1995. Both petitions were considered in one hearing with testimony and exhibits admitted on both transfers. Poplar and Froid appeared and were represented by counsel at the hearing.

On May 24, 1995, the County Superintendent issued Findings, Conclusions and an Order granting the transfer. Poplar appealed to this Superintendent. The school districts' attorneys stipulated that "neither the Appellants [Poplar] or the

Respondents [Froid] view the transcript as an essential element of this contested case." Based on the stipulation, the State Superintendent reviewed this appeal without a transcript. Testimony was not part of the record on review and the exhibits were considered without supporting testimony.

DECISION AND ORDER

The State Superintendent has jurisdiction over this matter under § 20-6-320, MCA. There is substantial, credible evidence in the record to support all the findings of fact. Except for conclusion of law 17, the conclusions of law are correct. The order is affirmed except for conclusion of law 17, which is struck. This matter is remanded to the County Superintendent for the sole purpose of determining if, regardless of conclusion of law 17, she would continue to approve the transfer.

STANDARD OF REVIEW

The State Superintendent's review of a county superintendent's decision is based on the standard of review of administrative decisions established by the Montana Legislature in § 2-4-704, MCA, and adopted by this Superintendent in ARM 10.6.125. Findings of fact are reviewed under a clearly erroneous standard and conclusions of law are reviewed under an abuse of discretion standard. Harris v. Trustees, Cascade County School Districts No. 6 and F, and Nancy Keenan, 241 Mont. 274, 786 P.2d 1164 (1990).

Petitioner has the burden of showing that he has been prejudiced by a clearly erroneous ruling. Terry v. Board of

Regents, 220 Mont. 214, at 217, 714 P.2d 151, at 153 (1986). A finding is clearly erroneous if a "review of the record leaves the Court with the definite and firm conviction that a mistake has been committed." Wage Appeal v. Board of Personnel Appeals, 208 Mont. 33, at 40, 676 P.2d 194, at 198 (1984). Conclusions of law are reviewed to determine if the agency's interpretation of the law is correct. Steer, Inc. v. Dept. of Revenue, 245 Mont. 470, at 474, 803 P.2d at 603 (1990).

MEMORANDUM OPINION

Poplar High School raised four issues on appeal:

1. The County Superintendent's finding that the benefits to Froid outweigh the burdens to Poplar is clearly erroneous.
2. The County Superintendent's Order should be reversed because Poplar has a policy of requiring its employees to live in the District and several employees live in the territory to be transferred.
3. The County Superintendent relied on irrelevant past history concerning the Poplar school district.
4. The County Superintendent erroneously place a burden of proof on the Poplar School system.

Issue 1. Section 20-6-320(6), MCA, states the standard a county superintendent must use to decide whether to grant or deny a request to transfer territory:

"The decision must be based on the effects that the transfer would have on those residing in the territory proposed for transfer as well as those residing in the remaining territory of the high school district." (Emphasis added.)

Poplar argues that the evidence of the burden on the Poplar taxpayers outweighs the evidence of benefit to Froid. The stipulated record does not support this argument.

A. The effects on the remaining taxpayers of the Poplar School District. Poplar's evidence supports the fact that it will lose tax base. A territory transfer will always cause one district to lose tax base. That effect alone is not grounds to deny a transfer. In a territory transfer hearing a county superintendent must consider evidence offered on all the effects of the transfer and decide which side's benefits and burdens outweigh the other's. The burden on the taxpayers in a district losing territory is an important consideration but, unless the transfer reduces a district's taxbase below a minimally acceptable amount (see §§ 20-6-320 (3) and 20-6-325 (8) for example), the fact that a taxbase decreases does not preclude the transfer.

The County Superintendent understood the effect of the transfer on Poplar's taxbase and determined that the other benefits of the transfer outweighed this.

[t]he proper inquiry concerns the relative significance of the decrease in taxable valuation and not the mere fact that a decrease will result. . . . I conclude that any adverse impact that might result from an approximately 6% decrease in taxable valuation for the Poplar District does not outweigh the benefits that would result to the residents of the transfer area if the petition were granted." (COL 15 and 16).

This decision is within her discretion. There is evidence in the record to support the County Superintendent's findings of fact and her conclusions of law are consistent with the statutory test to be applied to decide a territory transfer.

B. Poplar argues that the County Superintendent should have denied the transfer based on the loss in taxable valuation in the

Poplar District since 1986. The Order shows that the County Superintendent was aware of the loss in taxable value for Froid (72.1%), Poplar (65%) and Roosevelt County (65%) between 1986 and 1994. (FOF 12, 13 and COL 13). The County Superintendent stated:

I conclude that the decline in taxable valuation suffered by the Poplar District from 1986 to 1994 is no different than that of any other taxing jurisdiction in Roosevelt County and thus is not relevant to any current assessment of the adverse effects the proposed territory transfer might have.

This analysis is correct.

Poplar wants to compare pre-1989 taxbases to post-1989 taxbases without taking into account the change in the method of taxing oil and gas net proceeds. This comparison would not change the outcome of the burden/benefit analysis, however, because both Districts are impacted by this effect.

C. Guaranteed Tax Base Aid (GTBA). Conclusion of law 17 states:

"I conclude that any adverse impact to the Poplar District that might result from a decrease in taxable valuation, while not entirely offset, will be clearly mitigated by the increased availability of GTB funds that such a valuation decrease would create and does not outweigh the benefits to the petitioners if the land transfers are approved."

This reasoning would allow the transfer of territory to be based on shifting the tax burden from the taxpayer living in the district to the State taxpayer. Section 20-6-320(6), MCA, does not allow a transfer to be based on this standard.

The County Superintendent incorrectly analyzed GTBA in her reasons for approving the transfer. GTBA provides state general

fund revenues to ensure that the local mills to fund a district's general fund budget to BASE raise as much money as the statewide average mill. See §§ 20-6-306, 307, and 308, MCA. This Superintendent has held that the transfer of territory from a district cannot be justified on the grounds that GTBA will increase in the district losing territory and mitigate the effect of the loss of tax base. In the Matter of Transfer of Territory from Lame Deer High School District No. 6 to Hardin High School District No. 1, 15 Ed.Law 291, OSPI 251-95 (1996) In the Matter of Transfer of Territory from Lame Deer High School District No. 6 to Colstrip High School District No. 19, 15 Ed.Law 284, OSPI 250-95 (1996).

The County Superintendent's reference to GTBA in FOF 14 is correct and the Order does not rely solely on GTBA as a grounds for granting the transfer. However, on review, this Superintendent cannot determine that the County Superintendent would have approved the transfer regardless of her conclusion on GTBA in COL 17. Baldridge v. Rosebud County School District 19, 264 Mont. 199, 870 P.2d 711 (1994). Therefore, her order is remanded for the sole purpose of determining if, after striking conclusion of law 17, she would still approve the transfer.

Issue 2. District Residency Policy. Poplar has a policy requiring its employees to live in the District. Poplar argues that it was reversible error for the County Superintendent to allow the transfer because of the adverse effect on the District's employees living in the transferred territory.

Whether a district could in fact terminate employees because they live outside the district is an issue for another forum. Poplar is incorrect that the County Superintendent had to assume that it would terminate its employees living in the transfer area and deny the transfer on that grounds. The record does not show any evidence that Poplar was going to terminate employees and, even if it had, the County Superintendent could have given that effect the weight she chose.

The Order shows that the County Superintendent heard Poplar's evidence that it had a residency requirement and that the Board had the authority to waive the residency requirement. (FOF 25). In COL 11, she concluded that Poplar District has discretion in this area. The County Superintendent considered the evidence that the residency requirement existed and gave it the weight she considered proper.

Issue 3. Past history. The County Superintendent's order includes some findings of fact that might be more accurately described as summaries of testimony. These include findings of fact 17-20 which summarize testimony about events in 1954, 1962 and "never." Poplar argues that evidence of a district's practices in the remote past is irrelevant and this State Superintendent agrees. Poplar stipulated to administrative review of this decision without a transcript of the proceeding, however. The stipulated record does not establish that the County Superintendent gave material weight to evidence of practices in the remote past.

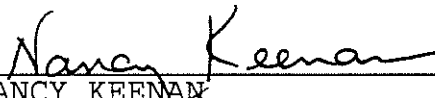
Issue 4. Burden of proof. Poplar argues that it had the burden of proof. Poplar is correct that the district that would lose territory does not have the burden of proof. As discussed above, a County Superintendent applies the balancing test stated to decide whether to grant or deny a petition for transfer. Not transferring the territory is the status quo and the petitioners have the burden of proving their petition should be granted. If the petitioners offered no testimony or exhibits at the hearing in support of a transfer, the transfer could not be granted.

Nothing in the record shows that the County Superintendent erroneously put the burden of proof on Poplar. The record shows that the petitioners offered substantial credible evidence in support of the transfer.

CONCLUSION

Substantial credible evidence supports the County Superintendent's findings of fact and the conclusions of law are correct as a matter of law except conclusion of law 17. The order is affirmed except for conclusion of law 17, which is struck. The matter is remanded to the County Superintendent for the sole purpose of determining if, regardless of conclusion of law 17, she would continue to approve the transfer.

DATED this 5th day of May, 1997.



NANCY KEENAN

POPLAR.257

CERTIFICATE OF SERVICE


THIS IS TO CERTIFY that on this 8th day of May 1997, a true and exact copy of the foregoing DECISION AND ORDER was mailed, postage prepaid, to the following:

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